

TAX PREPARER OBLIGATIONS AND DUTIES FAQ
Albuquerque's Tax Preparers and Consumer Rights: TPCR
THIS IS A SUMMARY Q&A FOR TAX PREPARERS. PLEASE CONSULT THE CITY'S ORDINANCE FOR ALL
PROVISIONS AND REQUIREMENTS

The Albuquerque City Council passed the Albuquerque Tax Preparers and Consumer Rights Ordinance on February 1, 2021. View the amended ordinance, as adopted, at cabq.gov and read the FAQ below for information on how it affects your business as a Tax Preparer. This FAQ does not constitute legal advice and a tax preparer should contact an attorney with questions of legal interpretation.

Q: Does the ordinance apply to me or my company?

A: The Ordinance applies to any person or business organization who prepares a personal income tax return for compensation. It also applies to any person who represents themselves as providing tax preparation services, subject to the following exemptions.

It does not apply to attorneys, certified public accountants, volunteer tax assistance programs, government employees who provide tax preparation services, or duly appointed representatives who provide tax preparation services. R.O.A. 1994 § 13-20-1-3 (hereinafter TPCR).

The ordinance does apply to tax preparers who are IRS "enrolled agents." This means that "enrolled agents" must comply with the disclosure requirements and tax preparer obligations outlined in the final Ordinance.

Mandatory Disclosures

Q: Before providing any tax preparer services to a consumer, what information must I disclose to the consumer?

A: Before providing any tax preparer services to a consumer, the tax preparer must provide the consumer the following mandatory disclosures:

(A) **Albuquerque Consumer Bill of Rights for Paid Personal Income Tax Preparation Services.**
TPCR § 13-20-1-4(A).

(B) **Tax Preparer Disclosure.** TPCR § 13-20-1-4(B).

- The tax preparer's name, address, and phone number.
- The tax preparer's IRS PTIN and New Mexico CRS identification number.
- A written summary of the tax preparer's qualifications, including educational degrees attained, years of education directly related to tax preparation service, and years of experience in tax preparation service. If you are an enrolled agent, you may include information about this training and certification with the tax preparer's qualification disclosures.
- As applicable, a statement that the tax preparer is not a certified public accountant or attorney or enrolled agent with the IRS.
- A statement that the consumer may (1) file their taxes for free by visiting the IRS website or (2) qualify for free tax preparation assistance from nonprofit organizations.
- A statement that the tax preparer will provide a written estimate of the total charges before entering into any written agreement with the consumer.

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(C) Fee Schedule Disclosure. TPCR § 13-20-1-4(C).

- A price list that describes each tax preparation service, including the cost of individual forms.
- A price list that describes any additional charges, including worksheets, processing, filing, billing, or other miscellaneous fees.
- A statement that the Fee Schedule Disclosure does not include any costs associated with Refund Settlement Products, including but not limited to Refund Anticipation Loans (RALs), Refund Anticipation Checks (RACs), or other similar products.

(D) Written Estimate of Fees. TPCR § 13-20-1-4(D).

- The tax preparer must provide a written estimate of the total charges before entering into any written agreement with the consumer.
- If an estimate of an anticipated tax refund is prepared in conjunction with a refund anticipation loan, refund anticipation check or refund settlement product, the tax preparer shall provide the consumer with:
 - a. A written estimate of the total charges based upon the tax preparation services anticipated;
 - b. The amount of any tax refund anticipated from the federal and any state government; and
 - c. A written estimate of the dollar amount and percentage of the consumer's total anticipated tax refund to be paid to the consumer once all fees of the tax preparer, including any affiliate of the tax preparer, are deducted. TPCR § 13-20-1-4(D)(2)(a - c).

This estimate should include not only any fees charged by the tax preparer but also the total of all fees, finance charge and principal owed for the refund settlement product, as required to be disclosed by state or federal law.

You can find the following disclosure documents in both English and Spanish at <https://cabq.gov/taxpreprights> :

1. Albuquerque Consumer Bill of Rights for Paid Personal Income Tax Preparation Services;
2. Tax Preparer Disclosure Model Form; and
3. Tax Preparer Fee Schedule Disclosure Model Form.

Q: Is a written agreement or contract required?

A: Yes. Before providing any services or charging any fees, a written agreement must be provided to, reviewed and signed by the consumer.

Q: Is it okay that I post a price range for the Fee Schedule Disclosure?

A: Yes, the tax preparer may post a price range for each tax preparation service. However, price ranges are permissible so long as it is an accurate estimation based on the information available at the time. It

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is recommended that the tax preparer explain to the consumer why the price range varies and what factors will impact the final cost.

Tax Preparer Obligations

Q: What duties do I owe the consumer after we enter into a written agreement or contract?

A: The following is a summary of duties that the tax preparer owes the consumer:

- The tax preparer must provide the consumer a reasonable opportunity to review the final draft tax return before it is filed. TPCR § 13-20-1-5(A).
- The tax preparer must give the consumer a copy of the final tax return for **free**. TPCR § 13-20-1-5(B)
- The tax preparer must return all personal papers and a copy of any schedules prepared to the consumer when (1) the final tax return is given to the consumer for filing; or (2) within five days of filing the final tax return. TPCR § 13-20-1-5(C).
- The tax preparer must comply with the consumer's choice to deposit the tax refund into the consumer's bank account. TPCR § 13-20-1-5(D).
- At the end of tax preparation services, the tax preparer must provide 1) a final itemized accounting of all services provided and the fees charged for those services and, if included, any refund settlement products, selected by the consumer, including any fees and costs; 2) a written explanation of any fees or costs charged in excess of the estimated charges previously disclosed; 3) a written statement setting forth the dollar amount and percentage of the consumer's total refund that is to be paid to the tax preparer and any affiliate of the tax preparer; and 4) a written statement setting forth the address and phone number where the consumer can contact the tax preparer throughout the year. TPCR § 13-20-1-4(E).

Q: Under the Ordinance, must a tax preparer apply for a license?

A: No. The Ordinance as originally proposed did include a licensure requirement. The Ordinance was amended before final action and these provisions were deleted from the final Ordinance.

However, all tax preparers doing business in Albuquerque should already have a business registration filed with the City.

Q. Does the tax preparer have to secure a bond?

A: No. The Ordinance as originally proposed did include a licensure bonding requirement. The Ordinance was amended before final action and these provisions were deleted from the final Ordinance.

Q: If I offer Refund Anticipation Loans or products or work with an affiliate to offer these products in conjunction with tax preparation services, what are my obligations under this Ordinance?

A: Tax preparers are **prohibited** from requiring the consumer to purchase a Refund Settlement Product in conjunction with tax preparation services. TPCR § 13-20-1-5(E); § 13-20-1-9(A).

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In addition to state and federal disclosure requirements regarding Refund Settlement Products, the tax preparer must provide the following with the **Written Estimate of Fees**. TPCR § 13-20-1-4(D)(2):

- The amount of any anticipated tax refund from the federal and state government.
- A written estimate of both the dollar amount and percentage deducted from the consumer's anticipated tax refund to pay for tax preparation services.

Q: Does the consumer have the right to be provided disclosures in English and Spanish? What if the consumer does not understand English or Spanish?

A: Yes, the tax preparer must offer the mandatory disclosures in either English or Spanish based on the consumer's preference. The forms will be available on-line in Spanish at <https://cabq.gov/taxpreprights>. If the consumer does not understand English or Spanish, the tax preparer must allow the consumer reasonable opportunity to seek a translator at the consumer's expense. TPCR § 13-20-1-4(G).

Q: Can I provide electronic documents to the consumer?

A: Yes, the tax preparer may provide either electronic or written forms to the consumer. Nevertheless, it is important that the tax preparer provide these forms in a reasonable manner so that the consumer understands the information. TPCR § 13-20-1-4(F)(1); § 13-20-1-4(I).

Q: Are there City of Albuquerque model disclosure forms? Are these forms required to be used?

A: The City's model disclosure forms are available in both English and Spanish and can be found at <https://cabq.gov/taxpreprights>. The tax preparer may choose to use their own mandatory disclosures but a tax preparer shall be deemed in compliance with the disclosure requirements if a tax preparer uses the model form.

Mandatory Postings

Q: What information related to my tax preparation services must be displayed at my business?

A: The tax preparer must display the following mandatory postings. TPCR § 13-20-1-8(A – G):

- A statement that the tax preparer must give the consumer a free copy of the "Albuquerque Consumer Bill of Rights for Paid Personal Income Tax Preparation Services." This brochure will be available on line at <https://cabq.gov/taxpreprights>
- A price list that describes each tax preparation service, including the cost of individual forms.
- A price list that describes any additional charges, including worksheets, processing, filing, billing, or other miscellaneous fees that may be charged.
- Where applicable, whether a taxpayer offers to prepare an estimate of the anticipated tax refund, in conjunction with a refund settlement product; or, if the tax preparer or an affiliate offers refund settlement products; and, if so:
 - A written description and price to prepare a tax refund estimate and other related fees;
 - The cost of any tax settlement product offered, consistent with state and federal disclosure requirements and including the annual percentage rate charged and any other fees or costs.

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- Tax preparer's name and business address.
- Tax preparer's IRS Preparer Tax Identification Number (PTIN) and New Mexico CRS Identification Number (CRS).

You can find model signs in both English and Spanish for posting at <https://cabq.gov/taxpreprights>.

Q: What if my business is a partnership or corporation?

A: If the tax preparer's company is a partnership, the tax preparer is required to display the names of the partnership's owners. If the tax preparer's company is a corporation, the name must be followed by the phrase "a corporation." TPCR § 13-20-1-8(E).

Q: Where must I display the required information related to my tax preparation services?

A: The tax preparer must display mandatory postings so that the information is accessible to the consumer either (a) where the consumer receives tax preparation consultation; or (b) at the tax preparer's primary entrance.

Q: If my company has a website, must mandatory postings be published online?

A: Yes, the tax preparer must publish mandatory postings on their website in a manner accessible to the consumer and in both English and Spanish.

Other Prohibited Activity

Q: Can a consumer be asked to sign any document that has blank spaces to be filled in later?

A: No, the tax preparer is prohibited from obtaining the consumer's signature to their tax return, or comparable authorizing document, that has blank spaces intended to be filled out later by the tax preparer. TPCR § 13-20-1-9(C).

Certification of Compliance

Q: Is there a document that I must sign and file with the City?

A: Yes, the tax preparer is required to sign and file a "Certification of Compliance" no later than December 15th each year. § 13-20-1-11. The certificate will be available at <https://cabq.gov/taxpreprights>. Please read the certificate's instructions for how to file the certificate.

Violations

Q: Are there penalties or other remedies provided for violations of the tax preparer ordinance?

A: The City may seek penalties of \$500 per violation for each day a violation occurs, and each day is a separate violation. The City may also seek injunction relief for a tax preparer who is not in compliance. TPCR § 13-20-1-10 (D). A consumer may seek damages in court if harmed by the acts or omissions of the tax preparer and injunctive relief as provided in the Ordinance.

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Q: Can I waive the requirements of the tax preparer ordinance when I enter into a written agreement or contract with the consumer?

A: No, any provision that attempts to avoid any rule under TPCR will be void and unenforceable. TPCR § 13-20-1-10(l).

You can find a copy of this document, "Tax Preparer FAQ," at <https://cabq.gov/taxpreprights> along with model disclosure forms. All forms will be available on-line shortly. Please be patient while we get all of these documents available on the website.

Q: If my business is a corporation, who is responsible for providing the disclosure to the taxpayer?

A: The person primarily responsible for providing tax preparation services to the taxpayer is also responsible for providing the disclosure to the taxpayer. The tax preparer whose PTIN or CRS is attached to the taxpayer's return bears the responsibility to provide the disclosure.

Q: Do I have to comply with the ordinance if my business is located in Albuquerque but only provide tax preparation services to clients beyond municipal limits? Do I have to comply with the ordinance if I provide tax preparation services to Albuquerque residents even though my business is located beyond municipal limits?

A: Generally, if the tax preparer's business is located within municipal limits, you are subject to the Ordinance. Also, if the tax preparer's business (a) performs transactions with or offers services to Albuquerque residents, (b) solicits Albuquerque residents, or (c) meets with clients inside municipal limits, the City takes the position that the tax preparer's business is subject to the ordinance.

The City does not and cannot offer legal advice to an individual or business. It is recommended that you consult an attorney if you have any questions.

"Tax Preparer FAQ" 5/03/21. The City will update this document as needed.